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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,169	04/14/2004	Michael Primm	A2000-718710	6353
37462 7590 01/11/2008 LOWRIE, LANDO & ANASTASI, LLP ONE MAIN STREET, SUITE 1100 CAMBRIDGE, MA 02142			EXAMINER ALAM, SHAHID AL	
			ART UNIT 2162	PAPER NUMBER
			NOTIFICATION DATE 01/11/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/824,169

Applicant(s)

PRIMM, MICHAEL

Examiner

Shahid Al Alam

Art Unit

2162

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 36-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 36-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10292007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed October 18, 2007 have been fully considered but they are not persuasive for the following reasons.
2. Applicant's main argument is that Wahl does not disclose "a sensor interface responsive to the processor and configured to receive environmental data."

Examiner respectfully disagrees all of the allegations as argued. Examiner, in his previous office action, gave detail explanation of claimed limitation and pointed out exact locations in the cited prior art.

Examiner is entitled to give claim limitations their broadest reasonable interpretation in light of the specification. See MPEP 2111 [R-1]

Interpretation of Claims-Broadest Reasonable Interpretation

During patent examination, the pending claims must be 'given the broadest reasonable interpretation consistent with the specification.' Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541,550-51 (CCPA 1969).

In response to applicant's argument that Wahl does not disclose a sensor interface responsive to the processor and configured to receive environmental data, Wahl teaches a graphical user interface which enables a user to create and configure throttles (similar to sensor interface). Throttles are user-defined tests and actions that evaluated by the primary mirror daemon to regulate network bandwidth, CPU, and

writelog device utilization during data update mirroring. A graphical user interface is preferably provided by the computer network remote data mirroring system for configuring the logical groups as well as for monitoring performance of the remote data mirroring system. With respect to Applicant's argument, Wahl further teaches data and metadata substantially as claimed, however, it would have been obvious to a person of ordinary skill in the art at the time of the invention was to modifying data to be environmental data since differences in type of data do not distinguish the invention in term of patentability.

See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

In view of the above, the examiner contends that all limitations as recited in the claims have been addressed in this Action and for that reasons, Examiner believed that rejection of the last Office action was proper.

Information Disclosure Statement

3. The information disclosure statement filed October 29, 2007 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information. It has been placed in the application file, but the information referred to therein has not been considered.

Mere listing of a reference in an information disclosure statement is not taken as an admission that the reference is prior art against the claims: *Riverwood Int'l Corp. v. R.A. Jones & Co.*, 324 F.3d 1346, 1354-55, 66 USPQ2d 1331, 1337-38 (Fed Cir. 2003) (listing of applicant's own prior patent in an IDS does not make it available as prior art absent a statutory basis); see also 37 CFR 1.97(h) ("The filing of an information disclosure statement shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in § 1.56(b).").

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 39 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim teaches a computer readable medium having computer readable signals

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 39 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

To be statutory, a claimed computer-related process must either: (A) result in a physical transformation outside the computer for which a practical application is either disclosed in the specification or would have been known to a skilled artisan, or (B) be limited to a practical application with useful, concrete and tangible result.

A practical application can be either physical transformation or a useful, concrete and **tangible** result.

The computer readable medium as recited in the claim 39 can be a storage medium as well as a "modulated data signal" or signals as described in the claim language. Claim 39 is not patent eligible because the claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

This claim is therefore drawn to a form of energy. Energy is not one of the four categories of invention and therefore this claim(s) is/are not statutory. Energy is not a

series of steps or acts and thus is not a process. Energy is not a physical article or object and as such is not a machine or manufacture. Energy is not a combination of substances and therefor not a composition of matter.

As such, the claim is not limited to statutory subject matter and is therefore non-statutory.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 16 and 36 – 39 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 6,442,706 issued to Steven B. Wahl et al. ("Wahl").

With respect to claim 1, Wahl teaches a system comprising:

a processor; a sensor interface responsive to the processor and configured to receive environmental data; and memory responsive to the processor (see abstract), the memory including:

program instructions operable to direct the processor to implement a kernel-mode device driver for manipulating a journal based data system associated with data received via the sensor interface (column 6, lines 28 – 32 and lines 59 – 67).

Claim 36 is essentially the same as claim 1 above except that it set forth the claimed invention as a method rather than a system and rejected for the same reasons as applied hereinabove.

Claim 39 is essentially the same as claim 1 above except that it set forth the claimed invention as a computer readable medium rather than a system and rejected for the same reasons as applied hereinabove.

As to claims 2 and 37, the kernel-mode device driver runs with supervisor privilege within a kernel of an operating system (column 9, lines 5 – 10).

As to claim 3, the kernel-mode device driver comprises code that runs with kernel privilege and provides access to a hardware device (column 9, lines 5 – 10).

As to claims 4 and 38, the memory further comprises program instructions for implementing a monitoring application (column 3, lines 49 – 54).

As to claim 5, a network interface responsive to the processor (column 3, lines 49 – 54).

As to claim 6, the memory further comprises program instructions for implementing a notification application for communicating data events via the network interface (column 2, lines 1 – 6).

As to claim 7, the memory further comprises program instructions for implementing a web server for communicating data via the network interface (column 23, lines 61 – 64).

As to claim 8, implementing a plurality of variable definitions in the journal based data system (column 6, lines 59 – 67).

As to claim 9, implementing each variable definition of the plurality of variable definitions to have an associated variable and to include an oldest update field and a latest update field (column 7, lines 37 – 48).

As to claim 10, implementing a plurality of update records in the journal based data system (column 7, lines 44 – 48).

As to claim 11, implementing each variable update record of the plurality of variable update records to have an associated variable and to include a variable value, a next update pointer, and a previous update pointer (column 7, lines 37 – 53).

As to claim 12, implementing the previous update pointer to point to an oldest update field of a variable definition associated with the associated variable (column 7, lines 37 – 53).

As to claim 13, implementing the next update pointer to point to the latest update field of a variable definition associated with the associated variable (column 7, lines 37 – 53).

As to claim 14, implementing a context record in the journal based data system (column 7, lines 37 – 38).

As to claim 15, implementing a current timestamp in the context record (column 7, lines 38 – 40).

As to claim 16, implementing, in the context record, a next update field including a pointer to a next update in a global journal of update records (column 7, lines 41 – 48).

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Contact Information

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahid Al Alam whose telephone number is (571) 272-4030. The examiner can normally be reached on Monday-Thursday 8:00 A.M.- 4:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Shahid Al Alam
Primary Examiner
Art Unit 2162

January 3, 2008